

***What Every Member of the
Trade Community Should Know About:***

Customs Enforcement of Intellectual Property Rights



A Basic Level
Informed Compliance Publication of the
U.S. Customs Service

June, 1999

NOTICE:

This publication was prepared for the guidance and information of the trade community. It reflects the Customs Service's position or interpretation of the applicable laws or regulations as of the date of publication, as shown on the front cover. It does not in any way replace or supersede the laws or regulations. Only the latest official version of the laws or regulations is authoritative.

Publication History

First Issued: June, 1999

PRINTING NOTE:

This publication was designed for electronic distribution via the Customs Electronic Bulletin Board and Customs Internet World Wide Web site (<http://www.customs.gov>) and is being distributed in a variety of formats. It was originally set up in WordPerfect® 8 using an Adobe Acrobat PDF printer driver. Pagination and margins in downloaded versions may vary depending on the wordprocessor and/or printer used. If you wish to maintain all the original settings, you may wish to download the .pdf version which can then be printed using the freely available Adobe Acrobat Reader®.

PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), which is also known as the Customs Modernization Act or “Mod Act,” became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are “***informed compliance***” and “***shared responsibility***.” These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

This office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly CD-ROMs and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, record keeping, drawback, penalties and liquidated damages.

The Intellectual Property Rights Branch, International Trade Compliance Division, Office of Regulations and Rulings has prepared this publication on ***Customs Enforcement of Intellectual Property Rights*** as part of a series of informed compliance publications advising the trade community of changes in Customs procedures as a result of the Mod Act and other legislation. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Stuart P. Seidel
Assistant Commissioner
Office of Regulations and Rulings

(This page intentionally left blank)

TABLE OF CONTENTS

I. BACKGROUND AND INTRODUCTION	1
II. INTELLECTUAL PROPERTY RIGHTS	1
A. WHAT ARE INTELLECTUAL PROPERTY RIGHTS?	1
B. WHAT IS INFRINGEMENT OF AN INTELLECTUAL PROPERTY RIGHT? ...	3
Trademark Infringement	3
Copyright Infringement	3
Patent Infringement	4
III. ROLE OF INTELLECTUAL PROPERTY RIGHT OWNER	4
A. WHAT INFORMATION MAY AN IPR OWNER PROVIDE CUSTOMS?	4
B. WHAT INFORMATION WILL CUSTOMS PROVIDE TO AN IPR OWNER?	
.....	5
C. HOW IS CUSTOMS ENFORCEMENT OF IPR INITIATED?	6
IV. CUSTOMS ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS	7
A. HOW DOES CUSTOMS RESPOND TO TRADEMARK INFRINGEMENT? ...	8
Counterfeit	8
Confusingly Similar	8
Gray Market	9
B. HOW DOES CUSTOMS RESPOND TO COPYRIGHT INFRINGEMENT? ...	10
Clearly Piratical	10
Possibly Piratical	11
C. WHAT ROLE DO VARIOUS OFFICES WITHIN CUSTOMS PLAY?	12
V. IMPORTERS AND INTELLECTUAL PROPERTY RIGHTS	12
A. HOW MAY AN IMPORTER DETERMINE WHETHER GOODS ARE	
NON-INFRINGEMENT PRIOR TO IMPORTATION?	12
B. ONCE THE GOODS ARE SEIZED WHAT RECOURSE DOES AN IMPORTER	
WITH SEIZED GOODS HAVE?	13
ADDITIONAL INFORMATION	14
Customs Electronic Bulletin Board	14
The Internet	14
Customs Regulations	15
Customs Bulletin	15
Importing Into the United States	15
Video Tapes	16
Informed Compliance Publications	17
Value Publications	18
Your Comments are Important	19

(This page intentionally left blank)

U.S. CUSTOMS ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

I. BACKGROUND AND INTRODUCTION

The importance of protecting intellectual property rights has received heightened recognition through the increase in world trade. Some estimates indicate that in 1996 business in the United States lost more than \$200 billion worldwide due to illegal counterfeiting. Between five to eight percent of all goods and services sold world wide are estimated to be counterfeit. The United States Customs Service, established in 1789, is a law enforcement agency of the Department of the Treasury and is vested with the powers of search, seizure and arrest. In an effort to combat the flow of infringing goods into the United States, the United States Customs Service has made a concerted effort to detect infringing merchandise entering the United States and to seize such goods. This mission is accomplished through the cooperation of various disciplines within Customs in targeting infringing merchandise and taking enforcement actions. By statutory authority, Customs has been granted the power to decide substantive issues of trademark and copyright infringement. In Fiscal Year 1998, United States Customs made 3,409 seizures involving intellectual property rights violations, having a domestic value of \$ 75,896,505.

Within the United States legal system both the Customs Service and courts of law are competent legal authorities which are provided the power to make determinations of infringement. As an administrative agency with law enforcement powers, the United States Customs Service has the legal authority to make infringement determinations regarding trademarks and copyrights, pursuant to the Tariff Act of 1930, the Lanham Act of 1946 and the Copyright Act of 1976. Customs, as an administrative agency, is without power to make determinations of patent infringement. Customs issues reasoned written decisions on substantive issues of trademark and copyright infringement. Additionally, Customs has been granted the law enforcement powers of search, seizure and arrest. The United States Customs Service is also charged with enforcing criminal laws pertaining to trademark and copyright infringement.

II. INTELLECTUAL PROPERTY RIGHTS

A. WHAT ARE INTELLECTUAL PROPERTY RIGHTS?

An intellectual property right is a descriptive term covering a vast area of inventive, artistic, descriptive and novel works indicating ownership of a particular right. Under United States law, a **trademark** is defined as a word, name, symbol, device, color or combination thereof used to distinguish goods, which identifies origin and ownership. Property rights in a trademark are created by adopting and using a distinct mark. U.S. Customs protects trademarks which are registered with the United States Patent and Trademark Office. Registration of a trademark covers a specific class or classes of goods, for a period of ten years and is renewable. Examples of well known trademarks which have been registered

with the United States Patent and Trademark Office and recorded with Customs are depicted below.



A **trade name** is the name under which a company does business. Trade names are not registered with the Patent and Trademark Office but may be recorded with Customs if the name has been used to identify a trade or manufacturer for at least six months. The recordation of trade names is published in the *Customs Bulletin* to provide notice to the public and interested parties an opportunity to oppose the recordation.

A **copyright** protects the tangible expression of an idea and gives the copyright owner the right to prevent the unauthorized use of his work. Under United States law, pursuant to 17 U.S.C. § 102(a), a copyright may exist in: literary works, musical works, dramatic works, pantomimes and choreographic works, pictorial, graphic and sculptural works, motion pictures and other audio visual works, sound recordings, and architectural works. A copyright is registered with the United States Copyright Office for either the life of the author plus 50 years or for 75 or 100 years depending on the authorship of the work and its creation date. United States Customs protection of copyrighted works is primarily concentrated on works which have been recorded with the agency. Non-expired claims to copyright which are registered with the Copyright Office may be recorded with Customs for a fee of \$190. Claims to copyrights entitled to protection under the Berne Convention for the Protection of Literary and Artistic Works, as amended, may also be eligible for recordation. An example of work which has been registered with the U.S. Copyright Office and recorded with Customs is depicted below.



© Disney Enterprises, Inc.

Patents in the United States are registered with the Patent and Trademark Office for any useful process, machine, manufacture or composition of matter or any new and useful improvement thereof. Three types of patents are issued in the United States for a period ranging from 14 to 20 years.

B. WHAT IS INFRINGEMENT OF AN INTELLECTUAL PROPERTY RIGHT?

Infringement of an intellectual property right involves the use of a protected right without the authorization of the right owner. U.S. Customs is empowered to make substantive decisions pertaining to trademark and copyright infringement.

TRADEMARK INFRINGEMENT

As a competent authority to decide substantive issues of trademark infringement, the United States Customs Service makes determinations as to trademark infringement. Customs regulations provide for three levels of infringement: counterfeit, confusingly similar or “gray market” (diverted goods or parallel importations).

Counterfeit

By statute, Title 15, United States Code, section 1127 (15 U.S.C. § 1127), a counterfeit mark is defined as a spurious mark which is identical with, or substantially indistinguishable from, a registered trademark.

Confusingly Similar

The legal standard for determining infringement where the mark is not counterfeit is “confusingly similar”. Under this standard, the dispositive issue is whether the mark is likely to cause confusion or mistake or to deceive the average consumer.

Gray Market (Parallel Imports)

“Gray market” goods are genuine goods manufactured in a foreign country, bearing a United States trademark and imported without the consent of the United States trademark owner.

COPYRIGHT INFRINGEMENT

The determination of copyright piracy is complex. The basic test is unauthorized substantial similarity of a material protected part of the copyright. In order to establish copyright infringement, copyright ownership and copying must be proven. With regard to establishing ownership of copyrights, pursuant to 17 U.S.C. § 410(c), a copyright registration evinces ownership of the copyright. Proof of copying may be established

through direct evidence of copying or through circumstantial evidence. Direct evidence of copying is rare. Circumstantial evidence of copying requires a showing of access to the work and substantial similarity to the protected work.

PATENT INFRINGEMENT

United States Customs Service enforcement actions relating to patents are limited. Customs is without legal authority to determine patent infringement. With regard to patents, Customs enforces **exclusion orders** issued by the United States International Trade Commission (ITC) and conducts **patent surveys**. Section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) provides relief to United States industries which have established the existence of unfair trade practices in importing. ITC exclusion orders are issued, among other things, for findings of infringement of a patent. Customs has authority to exclude from entry goods infringing a patent pursuant to an ITC exclusion order. Pursuant to 19 CFR 12.39(c), seizure is permitted under an ITC seizure order where the owner, importer or consignee has previously attempted to import the article, the article was previously denied entry, and written notice was provided to the importer that further attempt to enter the article would result in seizure and forfeiture.

Patent surveys are conducted by Customs to detect importations which appear to infringe a registered patent. Such surveys are conducted on behalf of and for the information of only the patent owner. Patent surveys are conducted for a fee ranging from \$1,000 to \$2,000 for a period of two to six months. Customs does not detain any shipment under a survey but may take samples to determine whether the merchandise might infringe. If possible infringing merchandise is detected, Customs provides the name and address of the importer to the patent owner.

III. ROLE OF INTELLECTUAL PROPERTY RIGHT OWNER

A. WHAT INFORMATION MAY AN IPR OWNER PROVIDE CUSTOMS?

U.S. Customs works in close cooperation with intellectual property rights owners. Subsequent to the federal registration of a trademark, a trademark may be recorded with Customs. Recordation with Customs is effective for the term of registration or the remaining period. The recordation is entered into the Intellectual Property Rights module database, a centralized record keeping system, and is accessible by Customs field offices. A portion of the information pertaining to the recordation of copyrights and trademarks and exclusion orders is made available to the public through the Customs Electronic Bulletin Board (CEBB), which may be accessed through U.S. Customs website on the internet (<http://www.customs.gov>). The recordation fee is currently \$190.

Copyright owners obtain Customs protection by submitting certified copies of their copyright registration certificate issued by the United States Copyright Office in addition to information required under the Customs regulations. Recordation with Customs is effective for a 20 year term or the remaining period of registration. A copyright recordation may be

renewed where the registration term exceeds the original 20 year recordation term. Berne Convention protected copyrights may be recorded with Customs upon a written submission.

Trademark and copyright owners may provide the following information along with their application:

- C the name and business address of the importer and/or consignee of the allegedly infringing articles;
- C a sufficiently detailed description of the suspect goods to make them readily recognizable by Customs, including a sample of the infringing article or a photographic or other likeness reproduced on paper;
- C the country of origin of the shipment and any countries through which the suspect goods are transhipped;
- C the country or countries of manufacture of the allegedly infringing merchandise;
- C the name and principal business address of each foreign person or business entity involved in the manufacture and/or distribution of suspect article;
- C the mode of transportation and the identity of the transporters of the allegedly infringing good;
- C the ports where it is anticipated the suspect articles will be presented to Customs;
- C the anticipated date of presentation to Customs;
- C the Harmonized Tariff Schedule designation of the suspect goods and;
- C any additional evidence relating to the importation of the suspect goods.

B. WHAT INFORMATION WILL CUSTOMS PROVIDE TO AN IPR OWNER?

Pursuant to the Customs regulations, an intellectual property right owner will be provided certain information where merchandise is detained or seized as infringing a tradename or registered copyright or trademark.

Where merchandise is seized as bearing a counterfeit mark or is seized as clearly piratical of a registered copyright, Customs will disclose to the intellectual property right

owner the following information, if available, within 30 business days of the date of the seizure notice:

- C date of importation
- C port of entry
- C description of merchandise
- C quantity involved
- C name and address of manufacturer
- C country of origin of merchandise
- C name and address of exporter and
- C name and address of importer

At any time following seizure of the merchandise, Customs may also provide a sample of the merchandise to the intellectual property right owner. To obtain a sample, the intellectual property right owner must furnish Customs a bond in the form and amount specified by the port director, conditioned to hold harmless the United States, its officers and employees, and the importer or owner of the imported merchandise harmless from any loss or damage resulting from the furnishing of a sample by Customs to the intellectual property right owner.

Where merchandise is detained as bearing a confusingly similar mark, as a gray market good or as possibly piratical of a registered and recorded copyright, the intellectual property owner will be provided the following information, if available, within 30 business days of the date of the detention:

- C date of importation
- C port of entry
- C description of merchandise
- C quantity involved and
- C country of origin of the merchandise

At any time following presentation of the merchandise for Customs examination but prior to seizure, Customs may provide a sample of the merchandise to the intellectual property right owner. The intellectual property right owner is required to file a bond with Customs in order to receive a sample.

C. HOW IS CUSTOMS ENFORCEMENT OF IPR INITIATED?

United States Customs on its own accord may initiate enforcement actions to detain or seize infringing merchandise. Through the combined efforts of the many disciplines within Customs and other government agencies, Customs may obtain information leading to the initiation and commencement of an enforcement action by a Customs officer. Where a trademark or copyright is federally registered with either the Patent and

Trademark Office or the United States Copyright Office, Customs may take action even if the trademark or copyright has not been recorded with Customs. Customs may initiate enforcement action through the issuance of an alert to field offices throughout the country. These alerts are used as targeting mechanisms to alert Customs field offices to the possible importation of infringing goods. In addition to enforcement actions taken on its own accord, Customs may take a second type of enforcement action through information provided by the right owner in recording the trademark or copyright with Customs.

An invaluable resource in the enforcement of intellectual property rights is the centralized recordation system. This system is the tool by which information is distributed service-wide. The Automated Commercial System Intellectual Property Rights (IPR) Module was designed to make it simpler for import specialists, inspectors and other Customs personnel to quickly find information related to intellectual property as it pertains to imported merchandise. All Customs personnel who have a computer properly connected may access the system. The IPR module is an annotated electronic index to recordations of intellectual property currently on file with the United States Customs Service. Through the system's keyword and other search capabilities, import specialists, inspectors, agents and Customs attorneys can quickly locate basic intellectual property rights information.

The IPR module contains information on trademarks, copyrights, trade names, International Trade Commission exclusion orders, and patent surveys. The IPR module also incorporates imaging technology. Photographs, drawings and graphics convey the nature of the intellectual property more effectively than words. With regard to copyrights and trademarks, information contained in the IPR module includes: name of IPR owner, contact person, type of IPR, product, description, owner name, places of manufacture, licensees, name/address, registration number, recordation number, expiration date, and any images.

Customs may also act upon application of the copyright or trademark right holder with regard to a specific or single shipment. A right holder may request Customs to seize merchandise relating to specific shipments which the right holder suspects will be imported into the United States and which it believes infringes its trademark or copyright. If at the time of recordation or at any point during the term of recordation the trademark owner or the copyright owner has knowledge of infringing importations, the right owner may upon application request that Customs seize merchandise bearing infringing marks or piratical merchandise.

IV. CUSTOMS ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

A right holder in the United States has available two avenues for enforcing its intellectual property right. A right holder may seek private redress and file for an injunction or a claim for monetary damages in a court of law, which may enjoin a purported infringer

from importing merchandise which infringes the intellectual property right. As stated above, however, a right holder may also seek public redress by petitioning the United States Customs Service to protect its property rights through the seizure of merchandise determined to infringe a federally registered trademark or copyright. As a consequence, there is often an interconnection between these two competent legal authorities, the courts and Customs. A right holder may present to Customs an injunction obtained from a court of law as evidence of infringement, prohibiting a particular party from importing infringing merchandise. Here, too, however, Customs enforcement covers trademarks and copyright but not patents.

A. HOW DOES CUSTOMS RESPOND TO TRADEMARK INFRINGEMENT?

The manner of Customs protection of a trademark right is determined by whether the mark has been recorded with Customs.

Counterfeit

Where imported merchandise bears a mark which is counterfeit of a registered and recorded trademark, Customs may seize the merchandise as bearing a counterfeit mark pursuant to 19 U.S.C. § 1526(e) and provide the importer with notice of the seizure. Customs officers inform the right holder of the seizure of the goods bearing the infringing marks pursuant to Customs regulations. Although Customs focuses on protection of trademarks which have been recorded with Customs, protection for federally registered trademarks which have not been recorded with Customs may also be provided. Where merchandise bears a mark which is determined to be counterfeit of a registered but unrecorded trademark, Customs may seize such merchandise pursuant to 19 U.S.C. § 1595a(c)(2)(C) (section 596 of the Tariff Act) for violation of 18 U.S.C. § 2320, involving trafficking in counterfeit goods.

Merchandise which is seized and forfeited as bearing a counterfeit mark must be destroyed, unless the trademark owner provides written consent and the merchandise is not unsafe or a health hazard. Where consent is provided by the trademark owner, after obliteration of the mark where feasible, the merchandise may be delivered to any Federal, State or local government agency, donated to a charitable institution or sold at public auction. In addition to the seizure of merchandise bearing counterfeit marks, pursuant to 19 U.S.C. § 1526(f), Customs may impose a civil fine on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise bearing a counterfeit mark.

Confusingly Similar

Merchandise bearing marks which are “confusingly similar” to registered and recorded trademarks is initially subject to detention. Customs notifies the importer in

writing of the detention and provides the importer with the opportunity to show that he has obtained permission from the right holder, that a personal exemption applies, or that if there are no prior incidents, he will obliterate the infringing mark. The importer has 30 days to obtain release of the merchandise. If the merchandise is not released within this time period, the merchandise is seized pursuant to 19 U.S.C. § 1595a(c)(2)(C) for violation of 15 U.S.C. § 1124. Merchandise bearing a mark which is confusingly similar to a trademark registered with the United States Patent and Trademark Office but not recorded with Customs, will, under current Customs policy, not be detained or seized.

Gray Market

Goods bearing a trademark which receives gray market protection are initially subject to detention. Customs provides gray market protection only to trademarks which have been recorded with Customs and where the U.S. trademark owner does not own the foreign trademark and no common ownership or control exists between the U.S. trademark owner and a foreign trademark owner. The importer is notified in writing that the goods have been detained as gray market goods. The importer is provided 30 days to obtain the consent of the U.S. trademark owner to import the goods or to remove the infringing trademarks. The importer has 30 days in which to obtain the release of the merchandise. If the merchandise is not released within this time period, the goods are seized pursuant to 19 U.S.C. § 1526(a). The importation of Gray market merchandise fitting the above descriptions is unlawful pursuant to 19 U.S.C. § 1526(a) and subject to seizure under 1526(b).

On February 24, 1999, regulations were published in the Federal Register relating to the implementation of the D.C. Court of Appeals decision in *Lever Bros. Co. v. United States*, 981 F2d 1330 (D.C. Cir. 1993). Prior to the *Lever Bros.* decision, gray market protection was not afforded trademarks where the foreign and U.S. trademark owners were subject to common ownership and control. The D.C. Court of Appeals determined that where the imported goods are physically and materially different from the goods authorized by the U.S. trademark owner, Customs may not exclude the trademark from receiving gray market protection on this basis. The Court of Appeals found that section 42 of the Lanham Act precluded the application of the affiliate exception where the imported goods were physically and materially different goods and that Customs should provide gray market protection. Section 42 of the Lanham Act protects against consumer deception or confusion about an article's origin or sponsorship.

The new regulations in Part 133 of the Customs Regulations provide that upon application of the trademark owner, even in affiliate exception cases, Customs will consider restricting the importation of physically and materially different products bearing genuine trademarks which are not authorized by the U.S. trademark owner. Under the new regulations, Customs will determine whether physical, material differences exist. This determination may include but is not limited to:

- composition of both the authorized and gray market products (including chemical composition),
- formulation,
- product construction,
- structure or composite product components, of both the authorized and gray market product,
- performance and/or operational characteristics of both the authorized and gray market product,
- differences resulting from legal or regulatory requirements, certification etc.,
-

and other distinguishing and explicitly defined factors that would likely result in consumer deception or confusion as proscribed under applicable law.

The new regulations provide that Customs will publish in the *Customs Bulletin* a notice listing any trademarks for which *Lever*-rule protection has been requested and the specific products for which gray market protection for physically and materially different products has been requested. Customs will examine the requests before issuing a determination on whether *Lever*-rule protection is granted. For parties requesting protection, the application for trademark protection will not take effect until Customs has made and issued this determination. If protection is granted, Customs will publish in the *Customs Bulletin* a notice that a trademark will receive *Lever*-rule protection with regard to a specific product.

The new regulation provides that the restriction to importation will not apply where a label is placed on the product informing the ultimate purchaser in the United States that the “product is not the product authorized by the United States trademark owner for importation and is physically and materially different.” Under the new regulation, where this label is placed on goods which would be excluded under *Lever*-rule protection, the goods could then be entered into the U.S.

B. HOW DOES CUSTOMS RESPOND TO COPYRIGHT INFRINGEMENT?

Clearly Piratical

In cases where the United States Customs Service is convinced that imported merchandise infringes a federally registered copyright and the copyright has been recorded with Customs, pursuant to statutory and regulatory authority, 17 U.S.C. § 602/603 and 19 CFR 133.42, the merchandise will be seized. Where a federally registered copyright has not been recorded with Customs and a determination is made that the merchandise is clearly piratical, the merchandise is subject to seizure pursuant to 19 U.S.C. § 1595a(c)(2)(C) for violation of 17 U.S.C. § 506/509.

Possibly Piratical

As a competent authority, Customs may detain imported merchandise, pursuant to statutory and regulatory authority, where an imported item, when compared to a protected work, raises a suspicion of substantial similarity. If the appropriate Customs officer has any reason to believe that an imported article may be an infringing copy or phono record of a recorded copyrighted work, the concerned port director will withhold delivery, notify the importer of his action and advise the importer that if the facts so warrant he may file a statement denying that the article is in fact an infringing copy. The importer is provided the opportunity to either admit or deny that copyright infringement exists and has 30 days to respond to the Customs notice of detention. In the absence of a denial, the merchandise will be considered infringing. Where the importer denies infringement, Customs notifies the copyright owner and provides the party with a sample of the imported merchandise.

If the copyright owner believes that the merchandise infringes its copyright, the copyright owner must file a written request that Customs exclude the merchandise and also deposit a bond within 30 days of the date of the notice, conditioned to hold the importer or owner of the imported article harmless from any loss or damage resulting from Customs detention in the event that Customs determines that the article is not an infringing copy. The amount of the bond is determined by the Port Director (often in the amount of 110% of the dutiable value of the goods).

Where the copyright owner exercises its right to file a written request to exclude the merchandise and the bond is posted, the importer and copyright owner will be afforded 30 days in which to submit additional evidence to the Intellectual Property Rights Branch at Headquarters. Briefs are exchanged between the copyright owner and the importer. Each party may file a response to the arguments raised by the opposing party. A determination is made as to whether the goods are piratical. Where Customs determines the goods are piratical, the goods are seized and forfeited and the bond is returned to the copyright owner. Where Customs determines that the goods are not piratical, the goods are released to the importer and the bond is turned over to the importer.

Merchandise which is initially determined to be possibly piratical of a federally registered copyright which has been recorded with Customs is subject to seizure pursuant to 17 U.S.C. § 603, if ruled to be infringing. Under Customs policy, merchandise which is initially determined to be possibly piratical of a registered copyright which has not been recorded with Customs is not subject to detention or seizure. Articles which have been determined to infringe a copyright will be destroyed pursuant to statutory and regulatory authority, 17 U.S.C. § 603(c) and 19 CFR 133.52(b).

C. WHAT ROLE DO VARIOUS OFFICES WITHIN CUSTOMS PLAY?

Through the coordination of various disciplines within Customs and with other agencies, Customs enforces the rights of intellectual property owners. The Office of Field Operations is responsible for the inspection of cargo, baggage, vehicles, vessels and aircraft arriving in the United States and also export control activities. Front line inspectors work in cooperation with import specialists to target shipments which may infringe federally registered trademarks and copyrights. In inspecting merchandise, Customs also coordinates with other agencies, such as the Consumer Product Safety Commission and the Food and Drug Administration. Additionally, field offices frequently communicate with the right holder in enforcing the particular trademark or copyright, or in the case of the enforcement of an exclusion order, the patent owner.

Laboratories and Scientific Services office provides scientific and technical information at Headquarters and seven field laboratories across the United States. Among other functions, these laboratories examine merchandise for copyright, patent, and trademark infringement violations. The attorneys in the Intellectual Property Rights Branch of the Office of Regulations and Rulings also play a supportive role in making substantive legal determinations on infringement issues.

The Office of Strategic Trade pinpoints importing trends, provides selectivity and targeting criteria, and compiles statistics on numerous issues, including seizures based on violations of intellectual property rights. The Office of International Affairs is vested with the responsibility of coordinating training and technical assistance to other countries throughout the world. The Office of Investigations performs investigations of all violations of Customs and related laws and regulations, both domestic and foreign, including violations of intellectual property rights. In instances involving substantial evidence, referrals are made by the Office of Investigations to the United States Attorney for possible criminal prosecution. The Office of Chief Counsel provides legal advice to Customs officers and litigation support in civil and criminal cases.

V. IMPORTERS AND INTELLECTUAL PROPERTY RIGHTS

A. HOW MAY AN IMPORTER DETERMINE WHETHER GOODS ARE NON-INFRINGEMENT PRIOR TO IMPORTATION?

As a competent authority to decide substantive issues of trademark and copyright infringement, Customs issues reasoned, written rulings and decisions and makes findings of fact and conclusions of law. Pursuant to the Customs regulations, Title 19, U.S. Code of Federal Regulations, section 177.1 (19 CFR 177.1), it is in the interest of the sound administration of the Customs and related laws that persons engaging in any transaction affected by those laws fully understand the consequences of the transaction prior to its consummation.

For this reason, the Customs Service gives full and careful consideration to written requests from importers and other interested parties for rulings or information setting forth, with respect to a specifically described transaction, a definitive interpretation of applicable law, or other appropriate information. Within the context of property interests in trademark and copyright, the Intellectual Property Rights Branch at Customs Headquarters will, upon written request by an importer or interested party, issue rulings on prospective importations, making determinations as to the infringement of any relevant trademarks or copyrights. The ruling letter represents the official position of the Customs Service with respect to the particular transaction and the issue of infringement and is binding on all Customs Service personnel. These rulings are transparent and made available to the public via our Internet website (see below) and are available for purchase from commercial sources on CD ROM. If a federal court of law issues a relevant opinion to the contrary, that decision will take precedence over Customs.

The United States Customs Service also provides the entire trade community with trade related information through the Customs Electronic Bulletin Board (CEBB). The CEEB is accessed through the Customs website at <http://www.customs.gov>. The CEEB includes trademarks and copyrights recorded with Customs as well as International Trade Commission exclusion orders enforced by Customs. Each recordation file may be searched by a keyword. The CEEB users include importers, brokers, lawyers, consultants and shippers.

B. ONCE THE GOODS ARE SEIZED WHAT RECOURSE DOES AN IMPORTER WITH SEIZED GOODS HAVE?

Where goods are seized for trademark or copyright infringement, a seizure notice will be issued to the importer, who may petition for administrative relief or may elect to bring suit to recover the merchandise in federal district court. Where Customs has seized merchandise, pursuant to the Customs regulations, 19 CFR 162.31(a), a written notice for liability of the forfeiture is issued to each party that the facts of the record indicate has an interest in the seized property. The notice informs any interested party in a case involving the forfeiture of seized property that unless the petitioner provides an express agreement to defer judicial or administrative forfeiture proceedings until completion of the administrative process, the case will be referred to the United States attorney, the prosecutor for the United States government, for forfeiture proceedings. An interested party elects whether to initially pursue remission of the forfeiture through administrative proceedings or to directly file in U.S. federal court.

ADDITIONAL INFORMATION

Customs Electronic Bulletin Board

The Customs Electronic Bulletin Board (CEBB) is an automated system that provides the trade community with current, relevant information about Customs operations and items of special interest. The CEBB is one of several Customs Service efforts to establish a more trade-friendly position vis-a-vis the importing and exporting community.

The CEBB posts timely information -- which includes proposed regulations, news releases, Customs publications and notices, etc. -- that can be downloaded to your PC. The Customs Service does not charge the public to use the CEBB; you only pay telephone charges.

The CEBB may be accessed by modem or through the Customs Service's home page on the World Wide Web. If you access it through a personal computer with a modem, set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703) 921-6155, and log on with your name. Then choose a password. The systems will then prompt you with a few questions, after which you will be able to get up-to-date information from Customs. If you have any questions about the CEBB, please call (703) 921-6236.

The Internet

The Customs Service's home page on the Internet's World Wide Web, which began public operation on August 1, 1996, also provides the trade community with current, relevant information regarding Customs operations and items of special interest. Like the CEBB, the web site was established as another trade-friendly mechanism to assist the importing and exporting community. Although some of the material on the CEBB and the web site is the same, the web site links to the home pages of many other agencies whose importing or exporting regulations Customs helps to enforce. Customs web site also contains a wealth of information of interest to a broader public than the trade community -- to international travelers, for example.

The home page will post timely information including proposed and final regulations, rulings, news releases, Customs publications and notices, etc., which can be searched, read on-line, printed or downloaded to your own PC. In addition, the CEBB can be accessed through our home page (see above). The Customs Service's web address is <http://www.customs.gov>.

Customs Regulations

The current edition of *Customs Regulations of the United States* is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone 202-512-1800. A bound, 1999 edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the Customs Regulations from April 1998 through March 1999, is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register*, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin*, described below.

Customs Bulletin

The *Customs Bulletin and Decisions* ("*Customs Bulletin*") is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as Customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the Customs Bulletin. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

Importing Into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The 1998 edition of *Importing Into the United States* contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and the Customs Service by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The 1998 edition contains a new section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between Customs and the import community, wherein Customs communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that Customs is provided accurate and timely data pertaining to his or her importations.

Single copies may be obtained from local Customs offices or from the Office of Public Affairs, U.S. Customs Service, 1300 Pennsylvania Avenue NW, Washington, DC

20229. An on-line version is available at the Customs web site. *Importing Into the United States* is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7054.

Video Tapes

The Customs Service has prepared a series of video tapes in VHS format for the trade community and other members of the public. As of the date of this publication, four tapes are available and are described below.

If you would like more information on any of the tapes below, or if you would like to order them, please send a written request to: U.S. Customs Service, Office of Regulations and Rulings, Suite 3.4A, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, Attn: Operational Oversight Division. Orders must be accompanied by a *check or money order drawn on a U.S. financial institution* and made payable to U.S. Customs Service. Prices include postage.

! *Rules of Origin for Textiles and Apparel Products* is a two-hour tape aimed at increasing understanding of the new rules, which became effective July 1, 1996. Copies of this tape are available from many trade organizations, customs brokers, consultants and law firms, or it can be ordered from the U.S. Customs Service for \$20.00.

! *Customs Compliance: Why You Should Care* is a 30-minute tape divided into two parts. Part I, almost 18 minutes in length, is designed to provide senior executives and others in the importing or exporting business with an overview of the significant features of the Customs Modernization Act and the reasons to adopt new strategies in order to minimize legal exposure under the Act. Part I features former Customs Commissioner George Weise, Assistant Commissioner for Regulations and Rulings Stuart Seidel, and Motorola's Vice President and Director of Corporate Compliance, Jack Bradshaw.

Part II is intended primarily for import/export compliance officers, legal departments and company officers. About 12 minutes long, Part II explains why Customs and the trade can benefit from sharing responsibilities under Customs laws. It also provides viewers with legal detail on record keeping, potential penalties for non-compliance, and on the Customs prior-disclosure program. Assistant Commissioner Seidel is the featured speaker. The cost is \$15.00.

- ! *Account Management: Team Building for World Trade*, a 13-½-minute tape on account management, discusses what account management is and why there is a need for it. Account Management is a new approach to working with the trade in which a company is treated as an account, rather than being dealt with on a transaction by transaction basis. The tape includes discussions with Customs account managers and representatives of importers (“accounts”) relating to the benefits of account management from the perspectives of the both the Customs Service and the trade community. The cost is \$15.00.
- ! *General-Order Warehousing: Rules for Handling Unclaimed Merchandise*, 90 minutes long, was prepared jointly by the Customs Service and the trade community on the subject of general-order merchandise (unclaimed goods). The tape includes question-and-answer discussions that define procedures required to implement the new general-order laws and regulations and why there is a need to have effective procedures for handling unclaimed goods. The cost is \$15.00.

Informed Compliance Publications

The U. S. Customs Service has prepared a number of Informed Compliance publications in the *What Every Member of the Trade Community Should Know About*: series. As of the date of this publication, the subjects listed below were available.

- | | | | |
|-----------------|--|-----------------|--|
| #Q ¹ | 1. Customs Value (5/96) | #Q ² | 14. Internal Combustion Piston Engines (5/97) |
| #Q ¹ | 2. Raw Cotton: Tariff Classification and Import Quotas (5/13/96) | #Q ² | 15. Vehicles, Parts and Accessories (5/97) |
| #Q ¹ | 3. NAFTA for Textiles & Textile Articles (5/14/96) | #Q ² | 16. Articles of Wax, Artificial Stone and Jewelry (8/97) |
| #Q ¹ | 4. Buying & Selling Commissions (6/96) | #Q ² | 17. Tariff Classification (11/97) |
| #Q ¹ | 5. Fibers & Yarn (8/96) | #Q ² | 18. Classification of Festive Articles (11/97) |
| #Q ³ | 6. Textile & Apparel Rules of Origin (10/96, Revised 11/98) | #Q ³ | 19. Ribbons & Trimmings (1/98) |
| #Q ¹ | 7. Mushrooms (10/96) | #Q ³ | 20. Agriculture Actual Use (1/98) |
| #Q ¹ | 8. Marble (11/96) | #Q ³ | 21. Reasonable Care (1/98) |
| #Q ¹ | 9. Peanuts (11/96) | #Q ³ | 22. Footwear (1/98) |
| #Q ¹ | 10. Bona Fide Sales & Sales for Exportation (11/96) | #Q ³ | 23. Drawback (3/98) |
| #Q ² | 11. Caviar (2/97) | #Q ³ | 24. Lamps, Lighting and Candle Holders (3/98) |
| #Q ² | 12. Granite (2/97) | #Q ³ | 25. NAFTA Eligibility and Building Stone (3/98) |
| #Q ² | 13. Distinguishing Bolts from Screws (5/97) | #Q ³ | 26. Rules of Origin (5/98) |
| | | #Q ³ | 27. Records and Recordkeeping Requirements (6/98) |

#Q ³	28. ABC's of Prior Disclosure (6/98)	#Q ³	32. Textile & Apparel Rules of Origin Index of Rulings (11/98)
#Q ³	29. Gloves, Mittens and Mitts (6/98)	#	33. Knit to Shape Apparel Products (1/99)
#Q ³	30. Waste & Scrap under Chapter 81 (6/98)	#	34. Hats and Other Headgear under HTSUS 6505 (3/99)
#Q ³	31. Tableware, Kitchenware, Other Household Articles and Toilet Articles of Plastics (11/98)	#	35. Customs Enforcement of Intellectual Property Rights (6/99)

indicates publications which are available for downloading from the Customs Electronic Bulletin Board ((703)-921-6155 or through Customs Home Page on the Internet);
Q indicates the publication is on Customs Home Page on the Internet's World Wide Web (<http://www.customs.gov>);

¹ denotes reprinted in *30/31 Customs Bulletin No.50/1*, January 2, 1997;

² denotes reprinted in *32 Customs Bulletin No.2/3*, January 21, 1998;

³ denotes reprinted in *32 Customs Bulletin No. 51*, December 23, 1998.

Check the Customs Electronic Bulletin Board and the Customs Internet website for more recent publications.

Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 CFR §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7054.

Additional information may be also be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

“Your Comments are Important”

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs, call 1-888-REG-FAIR (1-888-734-3247).

REPORT SMUGGLING 1-800-BE-ALERT



Visit our Internet website: www.customs.gov